CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50439 of 2016

(Arising out of order in original No. UDZ-EXCUS- 000-COM-0056-15 – 16 dated 22.01.2016 passed by the Commissioner of Central Excise, Udaipur).

M/s Sushil & Company **Appellant**
Sushil Sadan, Main Road
Chanderiya, Chittorgarh

VERSUS

Commissioner of Central Excise **Respondent**
142-B, Sector-11, Hiran Magri
Udaipur.

APPEARANCE:

Ms. Rinki Arora, Advocate for the appellant
Sh. G. R. Singh, Authorised Representative for the respondent

CORAM: HON'BLE MS. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 50651/2019

DATE OF HEARING: 06.05.2019
DATE OF DECISION: 06.05.2019

ARCHANA WADHWA:

After hearing both the sides duly represented by Ms. Rinki Arora, ld. Advocate for the appellant and Sh. G. R. Singh, ld. Departmental Representative for the Revenue, we find that in the impugned order the adjudicating authority has observed as under:

> "12. Personal hearing in the matter vide letter dated 30.09.2015 was fixed for 07.10.2015, 14.10.2015 or on 27.10.2015. in compliance to the said letter, the assessee vide letter dated 26.10.2015 submitted that they had decided to go before the Settlement Commission in the matter and therefore,

they requested not to conduct or fix personal hearing in the matter. They also submitted that they would make application before the Settlement Commission and provide a copy to the department.

12.1 Another date in the matter for personal hearing was fixed for 05.11.2015 and the assessee was requested to file the application before the Settlement Commission prior to 05.11.2015, if they intend to do so. Again vide letter dated 01.12.2015, a date for personal hearing was fixed for 14.12.2015. The assessee vide letter dated 11.12.2015 submitted that they had informed their decision to go before the Settlement Commission in the matter and therefore, they requested to fix personal hearing after 07.01.2016, so that by that time, they would arrange the funds, pay service tax with interest & file application before Settlement Commission. They further submitted that they would make application before Settlement Commission and provide a copy to the department. However, the assessee did not file the application before the Settlement Commission and have not submitted the copy of application thereof."

2. As is seen, the appellant was seeking repeated adjournments on the ground that they intended to approach the Settlement Commission. Learned Advocate for the appellant submits that subsequently they decided to contest the matter on merits but such decision was not intimated to the adjudicating authority. As such, without blaming the adjudicating authority, she submits that the impugned order stands passed in violation of principles of natural justice inasmuch as no effective hearing stands undertaken before the adjudicating authority. It is also seen that there is no reply filed by the appellant.

3. In the absence of the defence reply as also in the absence of the personal hearing, the impugned order stands passed. Though we note that repeated hearings fixed by the adjudicating authority were being adjourned at the behest of the appellant itself but the fact remains that the impugned order stands passed in the absence of any reply or personal hearing. As such, we set aside the same and remand the matter to the adjudicating authority for fresh decision. We direct the appellant to file the reply within a period of fifteen (15) days and to appear for the hearing as and when the same is fixed by the adjudicating authority. Non-cooperation on account of the appellant would authorise the adjudicating authority to decide the matter on the basis of the available record.

(Dictated and pronounced in open Court).

(Archana Wadhwa)
Member (Judicial)

(**Bijay Kumar**)
Member (Technical)

Pant